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**DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA**

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IN THE MATTER OF the Joint
Application of NorthWestern Corporation
and Babcock Brown Infrastructure
Limited, BBI US Holdings Pty. Ltd., BBI
US Holdings II Corp., and BBI Glacier
Corp. for Approval of the Sale and
Transfer of NorthWestern Corporation
Pursuant to a Merger Agreement

UTILITY DIVISION
DOCKET NO. D2006.6.82
REPLY BRIEF

I. Introduction

In accordance with the Commission's revised briefing schedule, NorthWestern Corporation, d/b/a NorthWestern Energy ("NorthWestern") and Babcock and Brown Infrastructure Limited ("BBI"), the Joint Applicants, respectfully submit their Reply Brief. As demonstrated herein, the Joint Applicants believe that the Commission is compelled by the record and legal precedent to find under the Consent Order that the acquisition of NorthWestern

by BBI as proposed would ensure NorthWestern continues to provide adequate service at just and reasonable rates.

II. The Acquisition Is In the Public Interest

A. *An Overview*

The proposed transaction offers the unique opportunity to meld together the positive attributes of NorthWestern as an operating company with the positive attributes of BBI as its owner. BBI is a financially sound company and will be a capable long-term owner of NorthWestern. As a long-term owner, BBI's commitment will be to ensure the ongoing financial strength and stability of NorthWestern, encourage NorthWestern's growth opportunities, continue to support development and capital investment in Montana, foster stability of retail rates and enable NorthWestern to undertake desired key projects and initiatives that are good for all stakeholders in Montana. To ensure NorthWestern continues to provide adequate service at just and reasonable rates, the conditions to be imposed in this transaction must be supportive of NorthWestern's long-term growth and stability and be conducive to ongoing development and material capital investment in Montana.

B. *The Acquisition Benefits Montana Ratepayers*

BBI and NorthWestern have articulated a proposal (the "BBI/NWE Proposal") that substantively meets the requirements of the Bankruptcy Stipulation and Consent Order, satisfies the Commission's Statement of Factors and addresses the issues raised by the MCC and other Intervenor, including the concern that BBI will maintain adequate equity in NorthWestern.

The BBI/NWE transaction, with the conditions agreed to by BBI and NorthWestern in Appendix A, offers a combination of consistency, clarity and transparency and provides material and substantial benefits to Montana ratepayers, including, but not limited to, the following:

- An international, multi-disciplined approach to energy generation, transmission and distribution;
- A long-term focused investor with a disciplined approach to system planning and asset management that incorporates direct input from key NorthWestern stakeholders;
- An investor with a clear and demonstrated track record of providing investment to meet changing customer/ratepayer needs and providing support to economic development in the geographic area of investment;
- A renewed commitment to a Montana focus for NorthWestern;
- Increased access to capital markets for expansion, including rate-based generation;
- The ability to access international bank debt markets;
- Continuity of full reporting and enhanced disclosure of financial and rate information;
- A commitment to increased financial liquidity;
- A commitment to maintain a minimum level of equity capitalization; and
- A commitment to use all reasonable efforts to maintain an investment grade rating on its Montana secured debt.

The benefits of the merger to Montanans are substantial. NorthWestern and BBI are stepping up their commitments to a Montana focus that will secure NorthWestern's position as a

locally based utility. There can be no guarantee that another acquirer would offer the same commitment. And, if the Company is not sold to BBI, there is no protection from existing shareholders, whose perspective is primarily the short-term.

BBI has pledged to retain the employee benefit plans and workforce currently in place. The merger will provide NorthWestern with a stable investor seeking opportunities to invest in additional equity infrastructure. BBI seeks long-term investments for its shareholders, i.e., largely pension funds with a requirement for assets that match their long-term liabilities.

BBI can draw on the Babcock & Brown companies' access to global debt markets, which when combined with the stable equity base, will improve the ability of NorthWestern to fund further capital expenditures. Given the numerous international markets within which BBI and the Babcock & Brown group of companies operate, savings opportunities should result from economies of scale and increased competition among the larger network of relationship banks seeking to conduct business with NorthWestern in the future.

BBI will ensure transparency and financial protections. NorthWestern and BBI have agreed to make periodic rate filings and filings of financial covenant compliance on a quarterly basis. These financial covenants are based on and significantly enhance existing provisions in the Bankruptcy Stipulation, which is a document that is well understood by the Commission. Importantly, these covenants provide historical consistency for comparative purposes and an ease of reference for external parties to scrutinize the ongoing performance of NorthWestern both against itself and external peers in the United States.

The Joint Applicants have agreed to prepare and submit short and long-term operating, management and strategic asset management plans (including posting those plans on its web page) which will enable the Commission and the other interested parties and stakeholders to

provide input to and monitor NorthWestern's quality of service and reliability for its operating assets following the merger.

III. The BBI/NWE Proposal and Why it Works

The BBI/NWE Proposal as set forth in the Opening Brief, and slightly modified herein, provides the Commission with a clear, transparent and consistent framework for ensuring that post-acquisition NorthWestern will continue to provide adequate service at just and reasonable rates.

A. Why the BBI/NWE Proposal Works.

The conditions offered by BBI and NorthWestern address the issues relevant to this proceeding raised (i) in the Intervenor's Direct Testimony, including that of Dr. Wilson for the MCC, (ii) at the Technical Hearings and (iii) in the Post-Hearing Briefs. Specific reference is made to issues raised in the Post-Hearing Brief of the MCC ("MCC Brief") and to Dr. Tom Power's issues relating to the location of the corporate headquarters.

1. Points 1 and 2 of the BBI/NWE Proposal address the exclusion of the BBI acquisition premium and acquisition related transaction costs from retail rates. BBI and NorthWestern originally offered and reiterate their commitment to such exclusions. Neither BBI nor NorthWestern are attempting to change the manner in which Montana retail rates are calculated and we assume that the MCC is taking the same position and not attempting to establish a new rate base methodology.

Points 1 and 2 fully address Conditions 1 and 2 in the MCC Brief.

2. Point 3 of the BBI/NWE Proposal addresses the financing of non-rate based assets.

As set forth in the Proposal, and always contemplated, BBI and NorthWestern agree that financing for assets that are not used to provide service to retail public utility customers will be undertaken on a basis that is non-recourse to NorthWestern and its public utility assets.

Point 3 fully addresses Condition 4 in the MCC Brief.

3. Point 4 of the BBI/NWE Proposal addresses required changes to the Consent Order to effect the acquisition.

The Proposal reiterates and addresses the changes necessary to reflect the fact that NorthWestern will become a subsidiary of BBI and will no longer remain a public company. The Consent Order is otherwise unchanged.

Point 4 addresses Condition 5(a) of the MCC Brief and other concerns raised at the Technical Hearing.

4. Point 5 of the BBI/NWE Proposal addresses disclosure of financial information by BBI.

BBI would register the Commission and the MCC on the BBI website, thereby providing access to all announcements to the ASX, including financial disclosures.

Point 5 fully addresses Condition 7 of the MCC Brief

5. Point 6 of the BBI/NWE Proposal addresses the need for periodic informational rate filings.

BBI and NorthWestern propose to make informational rate filings in 2009 and 2012 and believe that such filings are sufficient for the Commission to have the assurances it requires.

Point 6 addresses Condition 6 of the MCC Brief although with fewer required filings.

6. Point 7 of the BBI/NWE Proposal addresses financial metrics to ensure that NorthWestern will remain financially strong.

BBI and NorthWestern would covenant that NorthWestern maintain (i) a minimum liquidity level of \$100 million, (ii) a minimum equity to total capitalization of 40% consistent with the current provisions of the Consent Order, i.e., excluding the BBI acquisition premium (which includes acquisition costs) and (iii) as more fully described in subsection B. below, a minimum Montana rate base equity to total Montana rate base capitalization of 40%. If such levels are not maintained, distributions could be partially or fully blocked until these covenant levels are reinstated. NorthWestern also proposes to use all reasonable efforts to maintain an investment grade credit rating in respect of its Montana secured debt.

Point 7 is a more reliable, consistent and transparent alternative to Condition 3 and 5(b) of the MCC Brief. The Commission and other key stakeholders are already very familiar with each of these metrics from the Bankruptcy Stipulation and from filings made with the Commission.

7. Point 8 of the BBI/NWE Proposal addresses the intent of BBI and NorthWestern to provide periodic asset planning documents to the Commission and the public.

Point 8 is responsive to certain issues raised by the NRDC/HRC and AARP Montana and was discussed at the Technical Hearing.

8. Point 9 of the BBI/NWE Proposal addresses the relocation of the NorthWestern corporate headquarters or the establishment of a separate Montana business entity.

Point 9 responds to the condition proposed by Dr. Tom Power on behalf of the NRDC/HRC and was discussed at the Technical Hearing.

B. Why BBI/NWE Propose the Montana Regulatory Equity Capitalization Test

To ensure NorthWestern's ongoing financial strength, BBI and NorthWestern propose an additional test to monitor the equity capitalization ("tangible net worth") of NorthWestern's regulated Montana operations. This adds a 40% Montana regulated equity capitalization covenant to the Financial Metrics in Point 7 above. This calculation essentially would provide periodic reporting of the capitalization of the Montana regulated rate base (whereby Montana Regulated Equity would be equal to Montana Rate Base less Montana Regulated Debt, and Montana Rate base would equal Total Montana Regulated Capitalization). This ratio also currently exceeds 40% (the "MT Equity Capitalization"). While BBI and NorthWestern do not perceive this covenant as necessary to protect Montana ratepayers, they nonetheless endorse this covenant to demonstrate their commitment to the Montana operations.

C. Alternative Regulatory Capitalization Test

As an alternative to the MT Equity Capitalization covenant outlined above, if the Commission deemed it advisable, BBI and NorthWestern would be prepared to commit to a financial covenant that would reflect the equity capitalization of NorthWestern's entire regulated rate base instead of only the Montana rate base.

The Financial Metrics in Point 7 of the BBI/NWE Proposal are entirely consistent with, and supplement, the terms of the Consent Order and the Evaluation Factors set forth in the Commission's publication dated October 18, 2004. In fact, the Proposal adopts the definition of equity capital as set forth in the Consent Order and converts the liquidity and equity capitalization tests as specified in the Consent Order to covenants with the breach of the covenants potentially resulting in a dividend restriction or limitation. Stated differently, the Financial Metrics provide consistency with historical approaches developed in the Consent Order, strengthen the current Bankruptcy Stipulation, add an additional Montana-centric capitalization covenant and provide material disincentives (a potential dividend block) for breach of such covenants by NorthWestern. By contrast, the MCC proposal of a restriction on dividends based on net earnings simply provides an immediate and material disincentive to investment in infrastructure development and economic development in Montana.

In summary, the Proposal made by BBI and NorthWestern in the Opening Brief and this Reply Brief responds directly to relevant issues raised by each of the Intervenors in direct testimony, the hearings and subsequent briefs. BBI and NorthWestern believe that the financial metrics included in their Proposal offer a clear, consistent, transparent and enforceable means of ensuring NorthWestern's ongoing financial strength that is reported on a regular basis to the Commission and importantly comply with Generally Accepted Accounting Principles

(“GAAP”). The financial covenants in the BBI/NWE Proposal are consistent with and indeed strengthen the protections that were contemplated in the Bankruptcy Stipulation. If these financial metrics were appropriate upon NorthWestern’s emergence from bankruptcy, and these financial metrics are now enhanced by the BBI/NWE Proposal, they must by definition improve the means of ensuring NorthWestern’s ongoing financial health post acquisition by BBI.

IV. The Intervenors’ Rebuttal Briefs

The MCC, AARP Montana, Human Resource Council, District XI, Renewable Northwest Project, Natural Resources Defense Council, Ammondson, CELP/YELP, Heartland Consumers Power District, South Dakota Power Company, Inc. have all filed briefs as Intervenors arguing positions substantially the same as their pre-filed testimony or testimony during the public technical hearing on March 14 -16, 2007. As such, Applicants have addressed their arguments or proposed conditions in their Opening Brief. However, some of these Intervenors have made new arguments or suggested new conditions, which require a limited response by the Applicants.

A. The MCC

The MCC Brief specifies conditions that the MCC argues must be imposed on the acquisition of NorthWestern Energy by BBI. A thorough reading of the MCC Brief, however, results in one irrefutable conclusion. Setting the rhetoric aside, it is the MCC’s contention, and almost singular focus, that NorthWestern currently is inadequately capitalized – which it is not – and the acquisition of NorthWestern by BBI is the vehicle MCC believes should be employed to increase the equity capital of NorthWestern. In its Brief, the MCC attempts to redefine equity, and, in the process, rejects all generally accepted principles of accounting, which are fundamental to financial markets on a global basis.

The MCC's recommended financial metrics and its recommended distribution limitation equal to 100% of net earnings (and even less under certain circumstances) suffers from a host of problems, including: (i) the failure to recognize GAAP/tax differences that may be substantial, including the impact of existing NorthWestern net operating loss carryforwards, the accounting for the QF contracts, and other existing timing differences; (ii) the restriction would not be applicable to non-Montana jurisdictional assets, which are likely to exceed 50% of NorthWestern's asset base in the next several years; (iii) the lack of correlation between GAAP income which is based on historical costs and cash flow which is based on current costs; and (iv) an inability to clearly define net earnings for a company that is a subsidiary of another entity, particularly in respect of how the consolidated entity records and pays its taxes.

This last point is particularly relevant where items such as income and certain other taxes are not paid by the subsidiary but by the parent company. Indeed in a 2003 Order, the Utility Regulatory Commission of Indiana, in a financing order issued to Indianapolis Power & Light ("IPL") (a subsidiary of AES), addressed a request by the Indiana Utility Consumers Counsel that IPL's dividends be restricted so that the total dividends would not exceed IPL's earnings for the past four quarters. In response, the commission agreed with IPL that the meaning of the term earnings in this case is nebulous and stated it was "likewise unclear about how to describe the restriction that should be implemented" and adopted an alternate provision instead.

Perhaps most important for Montana, the dividend restriction proposed by the MCC acts as a huge deterrent to new capital investment. There is no logical incentive for any company to make voluntary investments in expansionary plant and equipment (including rate-based generation) if the company cannot expect to earn and realize a return on such investment. This is particularly true for utility assets, which have a relatively short tax life but a long GAAP

depreciation period. The effect is that while the short tax life results in increased cash flow, the GAAP depreciation concurrently reduces earnings. The ability of any company to pay dividends is a product of its cash flow and not of its book earnings.

In its Brief, the MCC articulates an equity capitalization test as an alternative to the expanded dividend restriction test. The capitalization test, which is set forth on the bottom of Page 32 and the top of Page 33 of the MCC Brief would impose a capital structure of a minimum of 40% equity on NorthWestern where the definition of equity (“Adjusted Equity”) excludes all goodwill and deferred acquisition costs, including not only the BBI acquisition premium (which includes deferred acquisition costs associated with the transaction) but also; (i) the \$375 million acquisition premium paid by NorthWestern to acquire Montana Power in 2002 and (ii) the \$60 million reorganization intangible recognized on NorthWestern’s emergence from bankruptcy.¹ The net effect of the MCC’s new self-developed test is that under its definition, NorthWestern “equity” declines from in excess of 50% of capitalization based on GAAP accounting to 31.41% of capitalization as of December 31, 2006 under the MCC’s unique methodology.

The MCC’s new equity capitalization test conforms to neither GAAP nor accepted principles of rate base accounting. As a consequence, there is no basis for such a calculation. The inference that NorthWestern is undercapitalized runs counter to the MCC’s testimony that “NorthWestern’s current management team has performed well in restoring NorthWestern to financial health and functionality as a utility”. (Direct Testimony, page 10, lines 12-14).

¹ The Joint Applicants do not agree with the MCC characterization of the reorganization intangible as consisting of (i) \$375 million of acquisition premium paid to acquire Montana Power Corporation in 2002 and (ii) \$60 million reorganization intangible recognized on emergence from bankruptcy. The Joint Applicants consider the entire \$435 million as Goodwill that was established on emergence from bankruptcy. This difference in characterization and the accounting analysis behind the Joint Applicants characterization are not relevant to this discussion of the equity test and are not pursued in this Reply Brief.

The MCC is raising arguments regarding the equity recorded on NorthWestern's books and the source of that equity. These arguments are incorrect, misplaced and appear to reflect how the MCC would prefer that the equity ratio should be determined as opposed to working within accepted professional principles. The focus of the Commission in this case is to assure itself that NorthWestern remains a fit and able provider of adequate service at just and reasonable rates. In that regard, the Commission should look to the financial markets which NorthWestern and BBI must access to raise capital. GAAP is the method by which equity is determined. GAAP methodology is recognized by every corporation in the United States, including utilities. The SEC, rating agencies, stock analysts, as well as the debt and equity markets in which NorthWestern must access, follow GAAP in measuring the balance sheet strength of a company. GAAP is not a subject of debate or interpretation, nor is it an area where Dr. Wilson's opinion is of any consequence because Dr Wilson is not an expert in accounting, and in fact, is arguing against well-established principles, endorsed by the global financial community.

An equity test that is based on GAAP reported financial statements is desirable. GAAP financials are understood by the investment community, more readily understood by interested ratepayers and other stakeholders, are the basis for access to capital markets and are the best indicator of adequacy of the company's "equity" in the real world. Since the MCC's equity capitalization test is not based on GAAP or any other discernable accounting methodology, it should be summarily rejected by the Commission.

It is interesting that the MCC would argue that a dividend restriction test based on GAAP earnings is desirable but an equity capitalization test based on GAAP is unacceptable. To now change a test that the MCC and the Commission had agreed to for NorthWestern, and under

which it has paid down more than a \$100 million in debt since its emergence from bankruptcy and has received investment grade ratings on its secured debt, is disingenuous.

If the MCC had a genuine concern about NorthWestern's current equity capitalization, it certainly would have raised the issue sooner rather than commenting positively on the financial health of NorthWestern. And if it did so, BBI could have addressed the perceived issue directly and succinctly. As stated in various forums and reiterated in this Reply Brief, BBI is committed to the financial health of NorthWestern and is not reluctant to make additional capital investment in NorthWestern whether for organic growth, network expansion, rate-based generation under the newly passed HB25, or otherwise.

Finally, the MCC's comment that NorthWestern's equity balance must be reduced by its goodwill balance in order to reflect "real" equity is misplaced. At the time NorthWestern emerged from bankruptcy it was required under GAAP (SOP 90-7 *Financial Reporting by Entities in Reorganization Under the Bankruptcy Code*) to apply fresh-start reporting. This consisted of revaluing the NorthWestern's balance sheet to reflect the fair market value of NorthWestern's assets and liabilities and to reflect the equity value approved by the Bankruptcy Court. This *is* real equity and changes to NorthWestern's equity since emerging from bankruptcy have been primarily due to net income and dividend payments, all in accordance with GAAP.

As of December 31, 2006, NorthWestern's reported equity capitalization was approximately 51% under GAAP. Moreover, if the equity capitalization test contained in the current Bankruptcy Stipulation and in the BBI/NWE Proposal were applied at December 31, 2006, it would result in the same equity capitalization ratio of approximately 51% (since the BBI acquisition premium - including deferred transaction expenses - is excluded from the calculation

of equity under the BBI/NWE Proposal). Under the additional Montana Regulatory Equity Capitalization Test proposed by BBI and NorthWestern herein, as of December 31, 2006, the Montana regulated equity capitalization was 47%, again well above the MCC's threshold of 40%. On both a GAAP and a Montana regulatory accounting basis, NorthWestern's equity capitalization is at least 47%.

Given the MCC's statement that "utilities typically strive to maintain equity ratios in the 40 to 50 percent range" (MCC Brief, page 13, lines 9-10), it is clear to BBI and NorthWestern that NorthWestern is not undercapitalized and the claims of Dr. Wilson and the MCC are without merit. Further, given that the proposed covenant in the BBI/NWE Proposal requires that NorthWestern maintain at least a 40% minimum equity capitalization ratio, BBI will not be able to make "equity extractions from above" as the MCC erroneously warns of (MCC Brief, page 26, line 10) that decrease NorthWestern's equity capitalization below the amount considered "typical" by the MCC. Therefore, neither the MCC's proposed dividend restriction based on Net Income, nor the MCC's alternate "Adjusted Equity" capitalization test, is necessary, advisable, or appropriate.

Perhaps, most importantly, the GAAP-based equity test contained in the Bankruptcy Stipulation and in the BBI and NorthWestern Proposal is transparent, can be easily understood and can be easily referenced and recalculated from the publicly available 10Q and 10K forms filed with the SEC which do comply with GAAP. This test is consistent with, and significantly strengthens, the Bankruptcy Stipulation (to which the Commission is a party) by limiting distributions in the event that the covenant is breached to ensure that equity is maintained in NorthWestern, and, together with the enhanced liquidity test proposed by BBI and NorthWestern

in their Opening Brief, is an appropriate and sufficient means of financial control for the Commission to ensure NorthWestern's ongoing financial health.

The focus of the Commission must be to ensure that NorthWestern remains financially viable and continues to provide adequate service at just and reasonable rates. BBI and NorthWestern have provided a consistent, reasonable, transparent and workable means for the Commission to monitor the financial condition of NorthWestern on a quarterly basis, as well as a method for redress in the event that one of the financial metrics is not met.

B. AARP Montana

Regardless of the alleged salutary purposes of the six conditions proposed by AARP Montana, the other constituencies are not present in this Docket, as acknowledged by AARP Montana (AARP Montana Brief, page 11). This Docket was not intended to serve the purpose of having the various parties that have been historically involved in the proposed conditions participate on that basis and there are other forums where the Commission can properly address such issues in a proactive manner with valuable input from the AARP Montana, as well as all other constituents.

BBI and NorthWestern are prepared to address the points raised by AARP Montana in an appropriate forum following completion of the acquisition of NorthWestern by BBI. It is BBI's intention to address and respond to issues raised by all stakeholders, including those raised by organizations committed to beneficial causes such as AARP Montana.

C. CELP/YELP

CELP/YELP have tried to muddy the waters over the proposed revisions to the Stipulation and Consent Order that the Applicants assert are necessary due to the structure of the

transaction and to provide assurance to the Commission that NorthWestern will remain a public utility that provides adequate service at just and reasonable rates. CELP/YELP's arguments are thus unpersuasive but some of the arguments require very limited response by Applicants.

Though CELP/YELP makes a confused argument over the revisions to Section 4(b)(i), the amendment to the definition of parent company to denote NorthWestern throughout the Stipulation and Consent Order is intended to eliminate any confusion over which entity is subject to the Stipulation and Consent Order.

The discussion of Sections 4(b)(iii)(2) and (8) though apparently in opposition to the proposed recommendations of the Applicants misconstrues those recommendations. Applicants have proposed in their recommendations that they would abide by Section 4 of the Stipulation and thus certain transmission projects would be conducted by a separate entity and be financed on non-recourse to the Montana Public Utility Assets.

CELP/YELP goes on to misread Section 4(f) to require the \$75 million in unrestricted cash on hand and/or immediately available credit to be "continuous and at all times available." The clear terms of Section 4(f) state that the \$75 million in unrestricted cash on hand and/or immediately available credit was to be available at a specific date, "on or before the Effective Date, . . ." which is defined as the Confirmation Date. See Section 2(m). Applicants' liquidity recommendation is a substantial improvement of Section 4(f). Moreover, maintaining the required level of liquidity at all times defeats the purpose of such provision. It is intended to be used to fund unanticipated expenditures as and when required with the obligation on the part of NorthWestern to restore the required level by the end of the then current quarter.

It is difficult to discern the argument made by CELP/YELP regarding the rate of return, Montana-Idaho transmission line and control area, and their relationship to the Commission's

review of this transaction. CELP/YELP misuse and misread a proposed rate of return in an active FERC transmission rate case to argue that BBI would be seeking the same rate of return on any investment in NorthWestern. The only proper response is that Mr. Boulton testified that NorthWestern would seek the appropriate rate of return from the MPSC for any retail utility investments by NorthWestern. March 16 Tr. vol. 3, 8-9 (Boulton).

The Applicants have stated many times in this Docket that projects like the Montana-Idaho transmission line would be separately funded with non-recourse financing to NorthWestern. The viability of this particular project has been measured through an open season mechanism, and the separate transmission rate for the project will be approved by FERC.

The control area argument has nothing to do with this transaction and the reserve issue is currently being addressed by NorthWestern with respect to ancillary services in the transmission rate case before FERC.

It appears that the intervention of CELP/YELP in this proceeding is simply an attempt by two entities to further enrich themselves by attempting to leverage their existing position.

D. Ammondson Plaintiffs

The Ammondson Plaintiffs (Plaintiffs), a group of 15 former executives, proposed six conditions, which have been previously addressed by Applicants' opening brief. To briefly reiterate, their request to set aside funds is improper. Plaintiffs fail to advise the Commission that the trial court has approved the \$25.8 million bond, which has been posted by NorthWestern. That approval means that the trial court is fully satisfied that the bond is sufficient as a source of funds to pay the final, non-appealable judgment in the Ammondson lawsuit. Therefore, no further action is required by the Commission.

Plaintiffs also fail to advise the Commission that NorthWestern is paying the amounts due under the existing contracts with each individual Plaintiff and that each individual Plaintiff was made whole plus interest for the prior amounts in question, before the trial commenced. NorthWestern has had to file a motion with the trial court to ask for a partial satisfaction of the judgment while NorthWestern continues to pay the amounts under the contracts during the appeal. There are no special contracts for executives that pay those executives supplemental retirement payments; those were special deals for these executives by the former Montana Power Company.

Applicants have testified that NorthWestern will continue to fund the pension plans of its employees; it is also required to do so under the Pension Protection Act of 2006.

Last, Applicants have shown that NorthWestern has and will continue to improve its financial health with the acquisition by BBI and has agreed to make additional informational rate filings in Montana to help monitor the utility's cost of service and financial well-being. Apparently, Plaintiffs are concerned that their unwarranted judgment may cause financial concerns for NorthWestern so they want NorthWestern to immediately file a rate case to recover sufficient monies from the ratepayers.

Plaintiffs last condition seeks to have the Commission abrogate contracts between NorthWestern and its employees – an action that exceeds the scope of the Commission's authority.

V. The Jurisdiction of the MPSC and its Standard of Review.

The Joint Applicants filed their Joint Petition in this docket in accordance with the Bankruptcy Stipulation and Consent Order because: (1) the transaction structure under the

Agreement and Plan of Merger requires modifications to the Consent Order, and; (2) the Consent Order required notice of the transaction to the Commission. Any proposed modifications to the Consent Order are to be judged in accordance with the standard of “reasonably adequate service” at “reasonable and just” rates set forth in Mont. Code Ann. § 69-3-201. Consent Order at ¶ L.

The Intervenor’s Heartland Consumers Power and South Dakota Power Company (“the South Dakota Intervenor’s”), as disappointed suitors for some of the assets of NWE, would like to see this Commission attempt to block the sale of NWE to BBI. The suggestion that the Commission can block the sale of NWE to BBI to keep alive the hopes of its acquisition by public power entities clearly calls into question the proper scope of the Commission’s jurisdiction. It is no coincidence that the entire brief of the South Dakota Intervenor’s is devoted to the subject of Commission jurisdiction. Similarly, the advocacy of AARP, specifically its demand for monetary benefits to its constituency as a condition of sale, call into question the scope of the Commission’s lawful powers, as does the demand of the Ammondson Plaintiffs for relief that has no relationship to the provision of utility service by NWE.

Contrary to the assertions of the various Intervenor’s, the Commission did not receive a broad delegation of unspecified authority under the general language of Mont. Code Ann. § 69-3-102. The reference in that section to the Commission’s power of “supervision, regulation, and control” is expressly limited to the actual provisions of Chapter 3 of Title 69. The Montana Supreme Court has already expressly so held:

Section 69-3-102, MCA, invests the Commission with “full power of supervision, regulation, ad control” of public utilities. The Commission, therefore, has discretion in choosing the means by which it will accomplish its functions. It does not, however, have limitless power to legislative prerogative. Having analyzed the scope of the powers statutorily granted to the Commission, we find no basis for respondent’s contention that the legislature, by implication, has given the Commission power to prohibit corporate

reorganization by its own order.

Montana Power Company v. Public Service Commission, 206 Mont. 359, 376, 671 P. 2d 604 (1983).

The argument that the Joint Applicants are estopped from challenging the scope of the Commission's jurisdiction in this case is similarly misplaced. The Joint Application in this docket was filed in accordance with the Consent Order, which expressly reserved the jurisdictional issue. The California case cited by the South Dakota Intervenors has no application to the facts of this case.

Though there may be disagreement over the Commission's jurisdiction to review mergers of a public utility governed by the laws of Montana outside of the present situation, see South Dakota Intervenors², there is agreement among the Joint Applicants and many of the Intervenors over the appropriate standard for the Commission to employ to determine if NorthWestern will be in compliance with the Bankruptcy Stipulation and Consent Order after the acquisition by BBI. That standard is whether NorthWestern will continue to provide adequate service at just and reasonable rates.

Thus, the disagreement among the Intervenors and the Joint Applicants is over what conditions satisfy the adequate service at just and reasonable rate standard. Joint Applicants have posited a series of conditions they believe fully meet this standard. The MCC has posited others. The only real disagreement between the MCC and the Joint Applicants is 1) does the

²The short portion of the MCC brief on the scope of the Commission's jurisdiction is curious. Although the MCC has never advocated in this docket for disapproval of the transaction, it argues: "The Commission has ample authority...to deny outright authorization to proceed...." MCC Brief at page 5, and cites to the case of Gallatin Natural Gas Co. v. Public Service Commission, 79 Mont. 269, 256 P. 373 (1927). If the Gallatin Natural Gas case defines the scope of the Commission's jurisdiction over the acquisition of the stock of a utility, as MCC apparently contends, BBI needs no authorization of the Commission to acquire the stock of NWE. In that case, Gallatin Natural Gas acquired the stock of the Billings Gas Company, without the approval of the Commission. Post acquisition, the Commission asserted jurisdiction over Gallatin Natural Gas Company by virtue of its acquisition, and demanded that it file an annual report with the Commission. The Court found that Gallatin Natural Gas had become a jurisdictional utility by virtue of its acquisition. The jurisdiction of the Commission over NWE, post sale, is not contested in this docket.

Commission need to impose a restriction on distributions from NorthWestern to BBI or other financial metric to ensure adequate service? And 2) if so, what is the measure of the restriction?

The Applicants assert that the MCC's proposal is so unrestricted in scope and inconsistent with globally accepted principles and standards (in that it has been self-developed by the MCC) that it could end up damaging NorthWestern and/or limiting future investment, whereas the financial metrics recommended by Applicants ensures adequate service, encourages investment and provides for the financial strength of NorthWestern.

VI. Issues With the MCC Brief

It is only necessary to point to several topics in the MCC Brief and, by extension, Dr. Wilson's Testimony, to highlight the Joint Applicants' concerns with the Wilson/MCC analyses.

A. Misapplication of the BBI Acquisition Model

The use of the BBI Acquisition Model has been previously discussed as the linchpin of Dr. Wilson's analysis. Indeed, Dr. Wilson and the MCC utilize only one single reference point (the BBI Acquisition Model) to support the contention that BBI intends to "drain the equity out of NorthWestern's capital structure". The MCC appears not to have conducted any acceptable form of robust due diligence to form their view that "new" form of equity valuation methodology to be applied to such a material asset which underpins the Montana economy and its ongoing development. Their view, apparently based on a single model, is inconsistent with the global financial community. To be clear and unequivocal, the BBI Acquisition Model did not at the time it was developed, and does not now, represent BBI's expected distributions in respect of the acquisition of NorthWestern. In fact, the BBI Model does not represent at all BBI's expectations

in respect of the operations, revenue, expense, capital expenditures or distributions of NorthWestern over the short or long-term.

What the Acquisition Model did and does represent is an evaluation of the capability of NorthWestern to generate minimum levels of income and cash flow in circumstances where there is substantially no growth, no expansion and no meaningful opportunities for capital investment in NorthWestern infrastructure over the 40-year evaluation horizon beyond those unique opportunities that exist today, specifically the Colstrip Expansion Project and the Montana-Idaho Pathway transmission project.

In evaluating the acquisition of NorthWestern, it was incumbent on BBI to demonstrate to its Board and to the rating agencies that NorthWestern could survive and pay off its financings in circumstances where NorthWestern ceases to grow. While that certainly is not the expected case, and BBI would not have offered to acquire NorthWestern if such a scenario were anticipated, it is common practice for investors to evaluate opportunities under highly conservative scenarios in order to justify very large capital commitments. Any prudent business person would demand such an analysis given the vagaries of the economy and the long-term nature of the model. Prudent and effective application of the fiduciary responsibilities of any Board demands such an analysis. The Model is not, however, an operations model, and the Board and the Rating Agencies knew and acknowledged this fact.

If Dr. Wilson had the interest in asking BBI to generate an expected case model, such a model would have included a capital expenditure in the range of \$200 million every other year or so in addition to the maintenance capital expenditures included in the Acquisition Model. The MCC suggests at p. 10 of its brief that BBI intends to pay out well over 100 percent of total earnings in each year of its ownership. Certainly, under any expected case scenario, BBI does

not expect to pay out more than 100% of earnings from operations on a consistent basis. (But it certainly may do so in years where there are not large capital expenditures to be made.) BBI expects to make substantial capital expenditures in NorthWestern's regulated and unregulated businesses which would require the investment of additional capital into the company and not the "draining" of existing capital. BBI expects to invest in Montana rate-based generation assuming it is permitted to do so. What BBI does not expect to do is to recover its acquisition premium or costs associated with the acquisition from regulated Montana utility ratepayers. BBI has repeatedly made this commitment to the Commission and in public disclosures, despite the MCC's claims to the contrary.

While the MCC argues that BBI intends to "drain" cash from NorthWestern, BBI's - practices in its other operations tell a far different story. In fact, as noted in Mr. Garland's Direct Testimony in connection with the Joint Application, and as reiterated in Mr. Sellar's rebuttal testimony and in the Opening Brief, BBI has committed in excess of **A\$1 billion** of capital to expansion of its existing operations in the fiscal year ending June 30, 2006 alone. Moreover, these expenditures are substantially all in excess of the capital expenditure projections made in the original business acquisition case models that supported the relevant acquisitions (in much the same manner as is discussed herein). In fact, in each and every investment made by BBI in its businesses thus far, the reality of meeting customer demands has driven BBI to invest more not less than its original projections of capital expenditure. Far from "draining" these businesses, BBI has supported them through major expansions that are intended to grow the business, improve service and importantly grow the local economies, which in turn has a positive impact on broader community wealth and well-being.

B. Failure to Conduct a Thorough Analysis

The MCC Brief claims that BBI has a practice of stripping equity from its investments. A thorough examination of BBI's other investments, rather than a simple desktop reading of financial statements, would have demonstrated how BBI conducts and manages those businesses. There is nothing to suggest that either Dr. Wilson or the MCC contacted regulatory authorities in Australia, New Zealand, the United Kingdom, Portugal or the Channel Islands to inquire as to BBI's business practices or whether BBI engaged in the type of behavior that concerned the MCC. In fact, it appears that the MCC has not even contacted the parties involved in BBI's other U.S. acquisition, namely, the Long Island Power Authority, with which BBI contracts the output of the Cross-Sound Cable Project, or the New York Public Service Commission.

A thorough evaluation in respect of BBI's other operations and of BBI's business practices would have clearly shown that rather than "draining" the companies of capital BBI actually has invested hundreds of millions of dollars into its various operations throughout the world. The MCC Brief on Footnote 4 on Page 10 notes in respect of Powerco alleges that BBI "applies this same dividend payout model to its other businesses". Their allegation is unsubstantiated. A correct and appropriately thorough analysis of the change in Powerco's reported equity since acquisition in November 2004 to June 2006 would conclude exactly the opposite outcome to this claim by the MCC. After allowing for non-cash items and accounting and tax adjustments associated specifically with acquisition accounting (in conformance with GAAP), Powerco's equity has in fact *increased* from its acquisition to June 30, 2006. It is interesting to note that the MCC failed to address the question of Powerco's equity capitalization of Mr. Sellar, BBI's CFO, after previously raising the question of Mr. Garland and Mr. Boulton.

The MCC and the Commission can view Powerco's long term investment profile and capital intentions by downloading Powerco's long term Asset Management Plan from the Powerco website via a link from the BBI website. If the MCC had viewed this document it would reveal that BBI/Powerco plan to invest in excess of NZD 630 million in capital (for the New Zealand electricity and gas businesses) over the next 10 years.³ This investment is approx 10% above the initial business acquisition case model and directly contradicts the assertion made by the MCC.

A similar investment profile exists for the Dalrymple Bay Coal Terminal (DBCT). Over the next 2 years, BBI expects to invest in excess of A\$1.3 billion in DBCT. This investment is in excess of 100% of the original business acquisition case model developed at the time of the transaction and directly responds to the needs of the customers of the facility by providing investment, which in turns drives the local economic development and growth in that State.

C. The Comparative Analysis

In his Direct Testimony Dr. Wilson attempted to demonstrate that BBI makes inordinately high distributions by comparing BBI's projections to a self-selected group of non-representative companies. BBI responded by including in Mr. Sellar's Rebuttal Testimony a table of annual distribution percentages of companies similar to NorthWestern in size and scope over a ten-year period. That analysis showed a substantially higher payout ratio for companies

³ A proper evaluation in respect of BBI's other operations and of BBI's business practices, would have clearly shown that rather than "draining" the companies of capital, BBI actually has invested hundreds of millions of dollars into its various operations throughout the world. Whereas the MCC Brief on Footnote 4 on Page 10 notes in respect of Powerco that BBI "applies this same dividend payout model to its other businesses", a correct analysis would conclude that the net reduction in Powerco's equity over the two year period since acquisition was related to a change to International Accounting Standards at Powerco in 2005 and the use of net operating tax losses created since acquisition by Powerco and various non cash acquisition accounting entries. . In fact, BBI has invested more than NZ\$350 million of capital into Powerco (including the New Zealand electricity and gas business and the Powerco Tasmania gas business) since November 2004 (the acquisition date) December 31, 2006 and has committed to invest in excess of NZ\$630 million over the next 10years (in respect of the New Zealand electricity and gas businesses. Yet, the MCC reached its conclusion by doing nothing more than reading financial statements without asking relevant and appropriate questions to the appropriate individual.

whose operations were primarily in regulated environments. In its Brief the MCC attempts to support its flawed conclusions by arguing that BBI's analysis is distorted because Mr. Sellar summarized the results using the average of the average payouts over the 10-year evaluation period. The MCC, however, states that its analysis (without supporting documentation) resulted in a 73% average payout rather than the 91% in BBI's analysis. If, however, we accept the MCC's general approach and add up all of the distributions of all companies over the 10-year period and divide by the total of the earnings of such companies over the same period, then the average distribution is 108%. The obvious conclusion is that one can make the numbers argue in favor of a desired result. The purpose of including the entire table in the Sellar Rebuttal Testimony, however, was simpler. It showed how often distributions for similar utilities approach or exceed levels that the MCC deems "excessive".

D. Misrepresentation Relating to Recovery of Goodwill

On Pages 13 and 14 of the MCC Brief, the MCC claims that BBI's Acquisition Model "clearly projects that its cash payout plan will produce a 13.6 percent rate of return on BBI's total equity investment, including its approximately \$700 million acquisition premium..." The Brief further alleges that "Notwithstanding assurances that no recovery of acquisition premiums will be sought from ratepayers, the record in this case demonstrates that BBI fully expects that rate revenues embodying rate of return allowances reflecting far more than equity capital than remains on NorthWestern's books (net of goodwill) will, in fact, recover that premium."

As stated in the Opening Brief and many times over in various of the BBI filings in this docket, however, and as *clearly* demonstrated and delineated in the BBI Acquisition Model, the regulated operations of NorthWestern never produce a return in excess of the allowed return on equity in rate base. The MCC has the model outputs and the model is explicit. It is only returns

on unregulated assets that permit a return on total equity in excess of the regulated return on equity in rate base. It is not clear why the MCC clearly and continually misrepresents the facts and the results.

It is not necessary or practical to point out any of the other deficiencies in the MCC Brief. Suffice it to say that BBI and NorthWestern are concerned with the continued selective use of data and the inconsistent evaluation and methods utilized by the MCC. It certainly seems that the analysis was structured to achieve a desired result to influence the broader stakeholders rather than reflecting an accurate, robust and thorough analysis.

VII. Conclusion

BBI and NorthWestern very much appreciate the diligence that the Commission has undertaken in its review and evaluation of the acquisition of NorthWestern by BBI. BBI and NorthWestern also appreciate the volume of information the Commission must review in its upcoming deliberations over the approval of the acquisition.

The proposed transaction offers the unique opportunity to meld together the positive attributes of NorthWestern as an operating company with the positive attributes of BBI as its owner and ongoing investor. As such, BBI and NorthWestern believe that the benefits of the merger to Montanans are significant. The importance of NorthWestern and its operations to Montana is critical and through this transaction NorthWestern and BBI are stepping up their commitments to the needs of Montanans.

The transaction, with the conditions agreed to by BBI and NorthWestern offers material and substantial benefits to Montana ratepayers, including, but not limited to, the following: (i) an international, multi-disciplined approach to energy generation, transmission and distribution;

(ii) a long-term focused investor with a disciplined approach to system planning and asset management that incorporates direct input from key NorthWestern stakeholders; (iii) an investor with a clear and demonstrated track record of providing investment to meet changing customer/ratepayer needs and providing support to economic development in the geographic area of investment; (iv) a renewed commitment to a Montana focus for NorthWestern; (v) increased access to capital markets for expansion, including rate-based generation; (vi) the ability to access international bank debt markets; (vii) continuity of full reporting and enhanced disclosure of financial and rate information; (viii) a commitment to increased financial liquidity; (ix) a commitment to maintain a minimum level of equity capitalization; and (x) a commitment to use all reasonable efforts to maintain an investment grade rating on its Montana secured debt.

District XI Human Resource Council, which has a uniquely long and substantive engagement with Montana utility issues, together with Renewable Northwest Project and the National Resources Defense Council, correctly framed the issue in their Post-Hearing Brief, pp. 4-5:

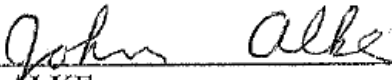
[T]he Commission should consider what happens if this merger/sale does not proceed. There is uncontroversial evidence in this proceeding . . . (that the current owners will) seek to have the company sold. Consequently, at some point, in the not so distant future, the parties might find ourselves back before the Commission in yet another proceeding that considers the fate of NWE. In the intervening years, however, time will have been lost that could have been used rebuilding the utility and putting it on a sound financial footing, NWE will have been in limbo, and competing concerns will prevent management from focusing on the day-to-day details of utility operation.

BBI and NorthWestern believe that their Proposal as set forth in the Opening Brief and supplemented by this Reply Brief offers a clear consistent, transparent, and easily understood and enforceable means of ensuring NorthWestern's ongoing financial health that are reported on a quarterly basis to the Commission. A summary of the full BBI/NWE Proposal is attached

hereto as Appendix A.

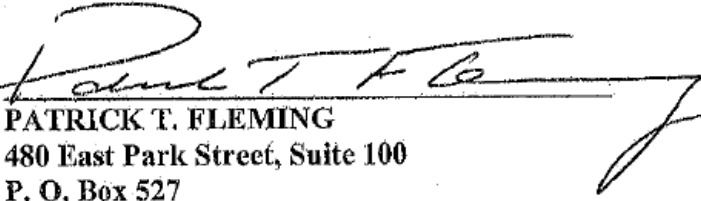
The financial tests articulated in the Proposal strengthen the protections that were contemplated in the Bankruptcy Stipulation and add a new financial metric base on NorthWestern's Montana regulatory capitalization. If these financial metrics were appropriate upon NorthWestern's emergence from bankruptcy, and these financial metrics are now enhanced by the BBI/NWE Proposal, they must by definition improve the means of ensuring NorthWestern's ongoing financial health post acquisition by BBI. The metrics will ensure the Commission that NorthWestern, after the merger, will continue to provide adequate service at just and reasonable rates. BBI and NorthWestern have provided the appropriate means for the Commission to concur that the acquisition does exactly that.

Dated this 16th day of May 2007.

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APPENDIX A

BBI/NWE Proposal

1. The acquisition premium paid by BBI for the stock of NorthWestern will not be recovered in rates paid by the ratepayers of Montana;
2. The transaction costs incurred by NorthWestern and BBI relating to the acquisition will not be recovered in rates paid by the ratepayers of Montana;
3. To the extent NorthWestern undertakes capital projects that are not Public Utility (as defined by Section 69-3-101, MCA) projects (i.e., to provide conventional utility service), debt financing for such projects shall not be secured by Public Utility assets, rather such projects shall be financed utilizing non-recourse project financing. Further, any portion of any debt financing by BBI or its affiliates, other than NorthWestern, that is devoted to any purpose other than providing funds to NorthWestern for its Public Utility operations shall be non-recourse to NorthWestern;
4. The effective and continuing provisions of the Commission Consent Order 6505e, shall be supplemented as follows:
 - a. The phrase the ultimate parent corporation (the “parent”) shall mean NorthWestern.
 - b. Affiliate should be defined as (i) any person that directly owns 5 per centum or more of the outstanding voting securities of NorthWestern, or (ii) any company with 5 per centum or more of whose outstanding voting securities are owned, controlled, or held with power to vote, directly or indirectly, by NorthWestern.

- c. The board of directors that is established to govern NorthWestern shall have at least one independent director and such director shall have substantial utility experience or qualify as a financial expert as defined by the NASDAQ Stock Market Inc. Marketplace rules (Independent Director). NorthWestern shall maintain an Audit Committee and a Governance Committee with an Independent Director serving as the chairperson of each such committee;
5. BBI will enable registration of the Commission and the MCC on BBI's website, with the effect that they will receive email notification of every public announcement made to the ASX, including a link to the announcement. This would include all public financial disclosure filings made by BBI in Australia to the ASIC or the ASX;
6. The Joint Applicants would propose to make periodic informational rate filings on September 30, 2009 and September 30, 2012. The NorthWestern filings would comply with the minimum electric and natural gas rate case filing standards provided in ARM 38.5.106 through 38.5.175, and would be based on a test year using the calendar year prior to the date of the filings. In the event NorthWestern filed a general rate case within eighteen months prior to each date listed above, it would not have to make the next scheduled informational rate filing;
7. Financial metrics:
- Increased Liquidity Minimum - Increase and maintain the liquidity requirement in the Bankruptcy Stipulation from \$75,000,000 to \$100,000,000, and making it applicable on an end of quarter basis.

Book Equity to Consolidated Total Capitalization - Implement a stand-alone version of the book equity to consolidated total capitalization provision currently in the Bankruptcy Stipulation (40%) and make it a covenant applicable on an end of quarter basis. The ratio would be computed consistent with the existing SEC-based (and therefore GAAP) financial test in the Bankruptcy Stipulation, which currently applies to the Investment Basket Test for NorthWestern's affiliate interest. (The definition of terms is in the text of the brief.)

Montana Regulated Equity to Total Montana Regulated Capitalization – The ratio of Montana Regulated Equity to Total Montana Regulated Capitalization will be no less than forty percent (40%). Montana Regulated Equity equals Montana Rate Base less Montana Regulated Debt. Total Montana Regulated Capitalization equals Montana Rate Base.

Quarterly Reporting and Compliance - NorthWestern would report the results of its Liquidity Minimum and its Book Equity to Consolidated Total Capitalization to the Commission following the date on which NorthWestern filed its quarterly SEC financial statement (10Q or 10K) in respect of such quarter and the results of its Montana Regulated Equity to Total Montana Regulated Capitalization at the end of each quarter ("Compliance Report"). Within 30 days following the issuance of a Compliance Report which indicated NorthWestern failed to meet any of the Liquidity Minimum, Book Equity to Consolidated Total Capitalization or Montana Regulated Equity to Total Montana Regulated Capitalization tests, NorthWestern would file a report with the Commission detailing the event(s) that led to such a result(s) and a plan of corrective action ("Corrective Plan").

If NorthWestern failed to restore its Liquidity Minimum and/or meet its Book Equity to Consolidated Total Capitalization or Montana Regulated Equity to Total Montana Regulated

Capitalization tests by the date of the next subsequent Compliance Report, or such later date as had been proposed by NorthWestern in its Corrective Plan and accepted by the Commission, the portion of any NorthWestern dividend payments to be made to its Parent Company in respect of such subsequent quarter and, if necessary, following quarters, related to its regulated Montana utility operations would then be limited to an amount no greater than that which would enable NorthWestern to promptly meet the Liquidity Minimum and the Book Equity to Consolidated Total Capitalization and Montana Regulated Equity to Total Montana Regulated Capitalization tests as demonstrated in subsequent quarterly or annual Compliance Reports as the case may be. The obligations to comply with and report these tests will expire once the tests have been met for three consecutive years (twelve quarters).

Credit Rating Measure The Joint Applicants would accept a requirement that NorthWestern take all measures necessary to ensure that NorthWestern has its own independent corporate credit rating, and will use all reasonable efforts to maintain an investment grade rating, on regulated Montana utility secured debt;

8. It is BBI's intent that NorthWestern executives will prepare and submit to the NorthWestern Board on an annual basis for the Board's review and approval, the following planning documents:

Asset Management Plan - The Asset Management Plan is a 10-15 year planning tool focusing on system planning, including asset technology and selection, regulatory undertakings, supply/demand balancing and the combined capital expenditures and

operating expenditures required to meet the demands of the key business stakeholders over the long term.

Strategic Plan - The Strategic Plan is a 3-5 year planning tool that considers the range of key drivers relevant to NorthWestern's businesses (including engineering, financial, commercial, business and environmental factors) and provides stakeholders with information about the businesses' vision, mission, guiding principles and key customer, community and safety focus for the medium term period.

Annual Operating Plan - The Annual Operating Plan is a short-term plan, which drives the key focus for the business for the immediate financial and reporting year. The output of the plan is the annual budget against which the board would approve and monitor performance. The Annual Operating Plan describes the expected management actions, revenue expectations and operating and capital expenditures for the period; and,

9. Based upon a proper evaluation by NorthWestern and BBI of the two options, NorthWestern will either move its corporate headquarters to Montana or establish a separate Montana regulated operations business entity after the three-year agreement with the South Dakota Commission has expired.

CERTIFICATE OF SERVICE BY MAIL

I HEREBY CERTIFY that a copy of the foregoing **REPLY BRIEF** was served upon the following by providing a true and correct copy thereof on May 16, 2007, as follows:

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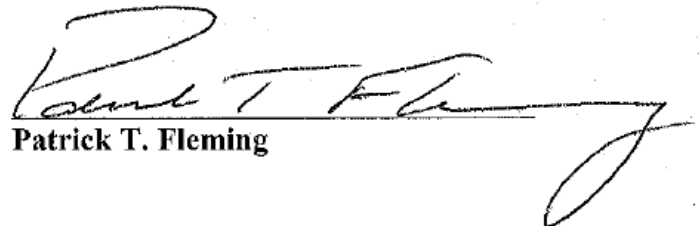
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